

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2012-007665

12/04/2012

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT  
T. Nosker  
Deputy

AMBER WINTERS, et al.

GEOFFREY M TRACHTENBERG

v.

BANNER HEALTH NETWORK, et al.

CHRISTOPHER L HERING

MINUTE ENTRY

The Court has read and considered the briefing on the following: (i) Motion to Dismiss (by Moving Defendants)<sup>1</sup>; (ii) Plaintiffs' Motion for Leave to File Second Amended Complaint; and (iii) Defendants' Motion to Deny Class Certification. The Court finds that the briefing is sufficient, and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. 7.1(c)(2) to expedite the business of the Court.

I.

Moving Defendants seek dismissal of the claims asserted against them by Open Lien Plaintiffs<sup>2</sup> on the basis that Open Lien Plaintiffs have no connection to Moving Defendants, Moving Defendants not having asserted healthcare-provider liens against personal injury claims of Open Lien Plaintiffs.<sup>3</sup> In response, Plaintiffs seek leave to file a Second Amended Complaint

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<sup>1</sup> Defendants Banner Health Network; Dignity Health; Northwest Hospital, LLC; Northern Arizona Healthcare Corp.; University Medical Center Corp.; Carondelet Health Network; Tucson Medical Center; and Oro Valley Hospital, LLC.

<sup>2</sup> Plaintiffs James Jolley, Jr.; John James; and Mark Shea.

<sup>3</sup> On September 27, 2012, the Court granted Defendants' Motion to Dismiss as to Closed Lien Plaintiffs.

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that adds over 40 new Plaintiffs and one new Defendant.<sup>4</sup> Defendants contend the proposed amendment contravenes Rule 16.3 and the Court's scheduling Order.<sup>5</sup> However, leave to amend should be freely granted in the interests of justice absent undue delay, undue prejudice, or futility in the amendment. Ariz. R. Civ. P. 15(a); *Owen v. Super. Ct.*, 133 Ariz. 75, 79 (1982); *Bishop v. State Dep't of Corr.*, 172 Ariz. 472, 474-75 (App. 1992). It is axiomatic that amendment of a complaint may adversely impact previously set deadlines. Defendants do not argue delay, prejudice, or futility; instead, they argue Plaintiffs failed to show good cause for the amendment. The Court agrees with Plaintiffs that good cause is not the standard by which the Court evaluates a motion to amend.

Accordingly, based on the foregoing,

IT IS ORDERED granting Plaintiffs' Motion for Leave to File Second Amended Complaint.

IT IS FURTHER ORDERED denying Moving Defendants' Motion to Dismiss (but granting same as to Defendant Oro Valley Hospital, LLC).

**II.**

Defendants request the Court deny the Complaint's request to certify subclasses 1 and 2 (*see* First Amended Complaint ¶¶ 67-92) on the basis that Plaintiffs failed to timely submit a motion to certify.<sup>6</sup> The Court having granted Plaintiffs' Motion for Leave to File Second Amended Complaint, the Court finds the issue of untimeliness is essentially moot. Accordingly,

IT IS ORDERED denying Defendants' Motion to Deny Class Certification.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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<sup>4</sup> Defendant Kingman Regional Medical Center. Plaintiffs concede dismissal is appropriate as to Defendant Oro Valley Hospital, LLC. (Resp. to Mot. to Dismiss at 2.)

<sup>5</sup> Specifically, Defendants contend that Plaintiffs represented in the Rule 16.3(a) Case Management Memorandum that the pleadings were closed. (Resp. to Mot. for Leave to Amend at 2-3.)

<sup>6</sup> *See* Ariz. R. Civ. P. 23(c)(1); Rule 16.3(a) Case Management Memorandum at ¶ 4.